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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL COLUMBUS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A02-0607-CR-559
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Randall L. Johnson, Judge
Cause No. 27D02-0501-FC-8

December 19, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Michael Columbus appeals his sentence for burglary as a class C felony.[1] Columbus raises three issues, which we consolidate and restate as:

I. Whether the trial court abused its discretion in sentencing Columbus;

II. Whether Columbus's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On September 7 or 8, 2004, and January 17, 2005, Columbus broke into Chuck's Sewer and Drain, his employer at the time, and stole checks. The checks appeared at local businesses made payable to Columbus and contained the forged signature of Chuck Poling, the owner of Chuck's Sewer and Drain. The State charged Columbus with two counts of burglary as class C felonies, five counts of forgery as class C felonies,[2] and two counts of theft as class D felonies.[3] Columbus pleaded guilty to one count of burglary as a class C felony, and the State dismissed the remaining counts. The plea agreement stated that the trial court shall determine the sentence "with the only stipulation being that COLUMBUS shall make restitution on all counts charged in this cause number." Appellant's Appendix at 37.

The trial court found the following mitigators:

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[1] Ind. Code § 35-43-2-1 (2004).

[2] Ind. Code § 35-43-5-2 (2004) (subsequently amended by Pub. L. No. 45-2005, § 2 (eff. July 1, 2005); Pub. L. No. 106-2006, § 3 (eff. July 1, 2006)).

[3] Ind. Code § 35-43-4-2 (2004).

1. [Columbus] has no history of delinquency or criminal activity, or the person has led a law abiding life for a substantial period before commission of the crime. While [Columbus] does have a criminal record, his last conviction was in 2001. The Court give [sic] this mitigator slight weight.

2. [Columbus] is likely to respond affirmatively to probation or short term imprisonment. [Columbus]'s last period of probation was completed successfully. [Columbus] has been incarcerated for a little over 1 year, by far, the lengthiest period he has ever served. [Columbus] expresses a desire to rebuild his life and to maintain abstinence from drug use. The Court give [sic] this mitigator slight weight.

3. [Columbus] has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained. As a condition of the defendant's plea agreement, he is to make restitution on all counts. The Court give [sic] this mitigator slight weight.

Id. at 54. The trial court found Columbus's criminal history as an aggravator and found that the aggravator outweighed the mitigators. The trial court sentenced Columbus to eight years in the Indiana Department of Correction with two years suspended and two years on probation.

I.

The first issue is whether the trial court abused its discretion in sentencing Columbus.[4] Sentencing decisions rest within the discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Smallwood v. State, 773 N.E.2d 259,

[4] Indiana's sentencing scheme was amended effective April 25, 2005, to incorporate advisory sentences rather than presumptive sentences. See Ind. Code §§ 35-38-1-7.1, 35-50-2-1.3. Columbus committed his offense prior to the effective date and was sentenced on February 27, 2006. We will apply the version of the sentencing statutes in effect at the time Columbus committed his offense. Moreover, the application of the amended sentencing statute would not change the result here.

263 (Ind. 2002). An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998). In order for a trial court to impose an enhanced sentence, it must: (1) identify the significant aggravating factors and mitigating factors; (2) relate the specific facts and reasons that the court found to those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. Veal v. State, 784 N.E.2d 490, 494 (Ind. 2003). Columbus argues that the trial court should have found his guilty plea as a mitigator and that the trial court improperly weighed his criminal history.

We first consider Columbus's proposed mitigator that he pleaded guilty. The trial court did not specifically identify Columbus's guilty plea as a mitigating factor. Indiana courts have recognized that a guilty plea is a significant mitigating circumstance in some circumstances. Trueblood v. State, 715 N.E.2d 1242, 1257 (Ind. 1999), reh'g denied, cert. denied, 531 U.S. 858, 121 S. Ct. 143 (2000). Where the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned. Sensback v. State, 720 N.E.2d 1160, 1164 (Ind. 1999). However, a guilty plea is not automatically a significant mitigating factor. Id. at 1165.

For example, in Sensback, the defendant argued that her guilty plea showed "acceptance of responsibility." Id. at 1164. However, the State argued that she received her benefit due in that the State dropped the robbery and auto theft counts in exchange for

her guilty plea to the felony murder charge. Id. at 1165. The Indiana Supreme Court agreed with the State that the defendant "received benefits for her plea adequate to permit the trial court to conclude that her plea did not constitute a significant mitigating factor." Id.

Here, Columbus received significant benefits from his guilty plea. In exchange for his guilty plea, the State dismissed the charges of one count of burglary as a class C felony, five counts of forgery as class C felonies, and two counts of theft as class D felonies. Thus, rather than facing a maximum sentence in excess of fifty years for the nine original counts, Columbus faced a maximum sentence of eight years. See Ind. Code §§ 35-50-2-6 to -7 (2004).[5] Columbus received a significant benefit from his guilty plea, and the trial court did not abuse its discretion by not identifying Columbus's guilty plea as a mitigating factor. See Sensback, 720 N.E.2d at 1164-1165.

Columbus argues that the trial court improperly weighed his criminal history. The significance of a criminal history "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." Wooley v. State, 716 N.E.2d 919, 929 n. 4 (Ind. 1999), reh'g denied. The trial court stated:

> The criminal history . . . is aggravating. It aggravates, uh, this sentence. The juvenile history is lengthy, involving a theft in 88, three months informal probation, a burglary in 91 . . . . As an adult, driving offenses, five counts check deception in 97, driving while suspended in 96, operating without insurance in 97, probation violation in 99 where you got 174 days

[5] Subsequently amended by Pub. L. No. 71-2005, §§ 9-10 (eff. April 25, 2005).

> in jail, an O.W.I. in 2001, and this set of charges. Again, I do find those to be aggravating, uh, circumstances that I give moderate weight to, and as it relates to what youve [sic] argued here today, I give great deal of weight to the fact that, uh, that burglary was committed when you did not, and the theft was committed as juveniles when you did not use drugs.

Transcript at 65-66.

The presentence investigation report reveals that Columbus has juvenile adjudications for criminal mischief, theft, truancy, battery, and burglary. As an adult, Columbus has been convicted of two counts of driving while suspended, two counts of driving without proof of insurance, five counts of check deception, and reckless driving. Columbus also violated his probation in 1999. Thus, the trial court did not abuse its discretion by considering Columbus's criminal history as an aggravator and assigning it moderate weight. See, e.g., White v. State, 756 N.E.2d 1057, 1062-1063 (Ind. Ct. App. 2001) (holding that the trial court properly found defendant's prior criminal history as an aggravator), trans. denied.

II.

The second issue is whether Columbus's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

Our review of the nature of the offense reveals that Columbus broke into his former employer's business and stole checks. Columbus then used the checks by forging his employer's signature. Columbus used the money to fund his cocaine addiction.

Our review of the character of the offender reveals that he has a lengthy criminal history. The trial court stated "I'm very concerned about the fact that you took advantage of people that you knew, and you stole from people that you knew and had treated you well." Transcript at 64. Although he received the maximum sentence, two years were suspended to probation. After due consideration of the trial court's decision, we cannot say that the eight-year sentence is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Sallee v. State, 785 N.E.2d 645, 654 (Ind. Ct. App. 2003) (concluding that the defendant's sentence was not inappropriate), trans. denied, cert. denied, 540 U.S. 990, 124 S. Ct. 480 (2003).

For the foregoing reasons, we affirm Columbus's sentence for burglary as a class C felony.

Affirmed.

KIRSCH, C. J. and MATHIAS, J. concur